

KING & SPALDING

January 21, 2025

VIA ECF

Hon. Leo M. Gordon
United States District Court
District of New Jersey
2 Federal Square
Newark, NJ 07102

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Re: *State of New Jersey v. U.S. Dep't of Transportation et al.*, No. 2:23-cv-03885

Dear Judge Gordon:

We write on behalf of the State of New Jersey to request a one-month extension of our time to respond to the FHWA's 250-page submission, filed last Friday—including a Notice of Compliance with Court's Remand Order and Explanation of Supplemental Memorandum ("Notice of Compliance"), Supplemental Memorandum, and Appendices A and B to the Supplemental Memorandum (*see* ECF No. 218)—from January 29, 2025, to and including February 28, 2025. The FHWA's submission includes newly-submitted evidence of the post-FONSI approach of the FHWA and Project Sponsors (the MTA) to mitigation (*see, e.g.*, ECF No. 218-3)—the critical issue on which this Court ordered a remand—as well as additional information on the phase-in approach announced in November 2024 and a 15-page Notice of Compliance, which, in fact, is a brief in support of the FHWA's position not contemplated by the Court's December 30, 2024 decision ordering this remand (*see* ECF No. 191 at 72), to which we will now also have to respond.

Pursuant to the Court's remand order, New Jersey's comments responding to the FHWA's submission of last Friday are due a week from today on January 29, which is less time than the FHWA received to submit its comments in the first instance. *See* ECF No. 191 at 72. In light of the FHWA's improper submission of a 15-page opening brief, Supplemental Memorandum and accompanying appendices, totaling nearly 250 pages, and the newly-submitted evidence of the post-FONSI approach of the FHWA and MTA on mitigation, New Jersey respectfully requests: (1) an extension of the deadline for New Jersey to submit comments from January 29, 2025 to February 28, 2025; and (2) an increase in the page limit for those comments from 15 pages to 30 pages. In addition, this extension will allow the parties and the court additional time to consider any further changes to the schedule based on New Jersey's anticipated amended complaint. In any event, while New Jersey aims to resolve this case expeditiously and was not the party that delayed its resolution for many months last year, it also seeks a full and fair opportunity to respond to the FHWA's ample submission.

This relief will not prejudice the FHWA or MTA in any way. Despite its remand order, this Court permitted congestion pricing to proceed, so the program is proceeding during the remand. Moreover, the deadline for the FHWA and the MTA's response comments can be similarly extended from February 28 to March 14. We requested Defendants' consent to this request; the FHWA declined and MTA didn't respond. We appreciate the Court's consideration.

Respectfully,

/s/ Randy M. Mastro

Randy M. Mastro

cc: All counsel of record (via ECF)